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UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

FOR RELEASE
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STATEMENT OF

CLARENCE M. KELLEY

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE ACTIVITIES

U. S. SENATE

WASHINGTON, D. C.

DECEMBER 10, 1975

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I welcome the interest which this Committee has shown in the FBI and most particularly in our operations in the intelligence and internal security fields.

I share your high regard for the rights guaranteed by the Constitution and laws of the United States. Throughout my 35-year career in law enforcement you will find the same insistence, as has been expressed by this Committee, upon programs of law enforcement that are themselves fully consistent with law.

I also have strongly supported the concept of legislative oversight. In fact, at the time my appointment as Director of the FBI was being considered by the Senate Judiciary Committee two and one-half years ago, I told the members of that Committee of my firm belief in Congressional oversight.

This Committee has completed the most exhaustive study of our intelligence and security operations that has ever been undertaken by anyone

outside the FBI other than the present Attorney General. At the outset, we pledged our fullest cooperation and promised to be as candid and forthright as possible in responding to your questions and complying with your requests.

I believe we have lived up to those promises.

The members and staff of this Committee have had unprecedented access to FBI information.

You have talked to the personnel who conduct security-type investigations and who are personally involved in every facet of our day-to-day intelligence operations.

You have attended numerous briefings by FBI officials who have sought to familiarize the Committee and its staff with all major areas of our activities and operations in the national security and intelligence fields.

In brief, you have had a firsthand examination of these matters that is unmatched at any time in the history of the Congress.

As this Committee has stated, these hearings have, of necessity, focused largely on certain errors and abuses. I credit this Committee for its forthright recognition that the hearings do not give a full or balanced account of the FBI's record of performance.

It is, perhaps, in the nature of such hearings to focus on abuses to the exclusion of positive accomplishments of the organization.

The Counterintelligence Programs which have received the lion's share of public attention and critical comment constituted an infinitesimal portion of our overall work.

A Justice Department Committee which was formed last year to conduct a thorough study of the FBI's Counterintelligence Programs has reported that in the five basic ones it found 3,247 Counterintelligence proposals were submitted to FBI Headquarters from 1956 to 1971. Of this total, 2,370 -- less than three-fourths -- were approved.

I repeat, the vast majority of those 3,247 proposals were being devised, considered, and many were rejected, in an era when the FBI was handling an average of 700,000 investigative matters per year.

Nonetheless, the criticism which has been expressed regarding the Counterintelligence Programs is most legitimate and understandable.

The question might well be asked what I had in mind when I stated last year that for the FBI to have done less than it did under the circumstances then existing would have been an abdication of its responsibilities to the American people.

What I said then -- in 1974 -- and what I believe today, is that the FBI employees involved in these programs did what they felt was expected of them by the President, the Attorney General, the Congress, and the people of the United States.

Bomb explosions rocked public and private offices and buildings; rioters led by revolutionary extremists laid siege to military, industrial, and educational facilities; and killings, maimings, and other atrocities accompanied such acts of violence from New England to California.

The victims of these acts were human beings -- men, women, and children. As is the case in time of peril -- whether real or perceived -- they looked to their Government, their elected and appointed leadership, and to the FBI and other law enforcement agencies to protect their lives, their property, and their rights.

There were many calls for action from Members of Congress and others, but few guidelines were furnished. The FBI and other law enforcement agencies were besieged by demands...impatient demands...for immediate action.

FBI employees recognized the danger; felt they had a responsibility to respond; and, in good faith,

initiated actions designed to counter conspiratorial efforts of self-proclaimed revolutionary groups, and to neutralize violent activities.

In the development and execution of these programs, mistakes of judgment admittedly were made.

Our concern over whatever abuses occurred in the Counterintelligence Programs -- and there were some substantial ones -- should not obscure the underlying purpose of those programs.

We must recognize that situations have occurred in the past and will arise in the future where the Government may well be expected to depart from its traditional role -- in the FBI's case, as an investigative and intelligence-gathering agency -- and take affirmative steps which are needed to meet an imminent threat to human life or property.

In short, if we learn a murder or bombing is to be carried out NOW, can we truly meet our responsibilities by investigating only after the crime has occurred, or should we have the ability to prevent? I refer to those instances where there is a strong sense of urgency because of an imminent threat to human life.

Where there exists the potential to penetrate and disrupt, the Congress must consider the question of

whether or not such preventive action should be available to the FBI.

These matters are currently being addressed by a task force in the Justice Department, including the FBI, and I am confident that Departmental guidelines and controls can be developed in cooperation with pertinent Committees of Congress to insure that such measures are used in an entirely responsible manner.

Probably the most important question here today is what assurances can I give that the errors and abuses which arose under the Counterintelligence Programs will not occur again?

First, let me assure the Committee that some very substantial changes have been made in key areas of the FBI's methods of operations since I took the oath of office as Director on July 9, 1973.

Today we place a high premium on openness -- openness both within and without the service.

I have instituted a program of open, frank discussion in the decision-making process which insures that no future program or major policy decision will ever be adopted without a full and critical review of its propriety.

Participatory management has become a fact in the FBI.

I have made it known throughout our Headquarters and Field Divisions that I welcome all employees, regardless of position or degree of experience, to contribute their thoughts and suggestions, and to voice whatever criticisms or reservations they may have concerning any area of our operations.

The ultimate decisions in the Bureau are mine, and I take full responsibility for them. My goal is to achieve maximum critical analysis among our personnel without in any manner weakening or undermining our basic command structure.

The results of this program have been most beneficial...to me personally...to the FBI's disciplined performance...and to the morale of our employees.

In addition, since some of the mistakes of the past were occasioned by direct orders from higher authorities outside the FBI, we have welcomed Attorney General Edward Levi's guidance, counsel, and his continuous availability -- in his own words -- "as a 'lightning rod' to deflect improper requests."

Within days after taking office, Attorney General Levi instructed that I immediately report to him any

requests or practices which, in my judgment, were improper or which, considering the context of the request, I believed presented the appearance of impropriety.

I am pleased to report to this Committee as I have to the Attorney General that during my nearly two and one-half years as Director under two Presidents and three Attorneys General, no one has approached me or made overtures -- directly or otherwise -- to use the FBI for partisan political or other improper purposes.

I can assure you that I would not for a moment consider honoring any such request.

I can assure you, too, in my administration of the FBI I routinely bring to the attention of the Attorney General and the Deputy Attorney General major policy questions, including those which arise in my continuing review of our operations and practices. These are discussed openly and candidly in order that the Attorney General can exercise his responsibilities over the FBI.

I am convinced that the basic structure of the FBI today is sound. But it would be a mistake to think that integrity can be assured only through institutional means.

Integrity is a human quality. It depends upon the character of the person who occupies the office of Director and every member of the FBI under him.

I am proud of the 19,000 men and women with whom it is my honor to serve today. Their dedication, their professionalism, their standards, and the self-discipline which they personally demand of themselves and expect of their associates are the Nation's ultimate assurance of proper and responsible conduct at all times by the FBI.

The Congress and the members of this Committee in particular have gained a great insight into the problems confronting the FBI in the security and intelligence fields -- problems which all too often we have been left to resolve without sufficient guidance from the Executive Branch or the Congress itself.

As in all human endeavors, errors of judgment have been made. But no one who is looking for the cause of our failures should confine his search solely to the FBI, or even to the Executive Branch.

The Congress itself has long possessed the mechanism for FBI oversight; yet, seldom has it been exercised.

An initial step was taken in the Senate in 1973 when the Committee on the Judiciary established a Subcommittee on FBI Oversight. Hearings had been

commenced, and we were fully committed to maximum participation with the members of that Subcommittee.

I laud their efforts. However, those efforts are of very recent origin in terms of the FBI's history.

One of the greatest benefits of the study this Committee has made is the expert knowledge you have gained of the complex problems confronting the FBI. But I respectfully submit that those benefits are wasted if they do not lead to the next step -- a step that I believe is absolutely essential -- a legislative charter, expressing Congressional determination of intelligence jurisdiction for the FBI.

Action to resolve the problems confronting us in the security and intelligence fields is urgently needed; and it must be undertaken in a forthright manner. Neither the Congress nor the public can afford to look the other way, leaving it to the FBI to do what must be done, as too often has occurred in the past.

This means too that Congress must assume a continuing role, not in the initial decision-making process but in the review of our performance.

I would caution against a too-ready reliance upon the Courts to do our tough thinking for us. Some proposals that have been advanced during these hearings would extend the role of the Courts into the early stages

of the investigative process and, thereby, would take over what historically have been Executive Branch decisions.

I frankly feel that such a trend, if unchecked, would seriously undermine the independence of the Judiciary and cast them in a role not contemplated by the authors of our Constitution. Judicial review cannot be a substitute for Congressional oversight or Executive decision.

The FBI urgently needs a clear and workable determination of our jurisdiction in the intelligence field, a jurisdictional statement that the Congress finds to be responsive to both the will and the needs of the American people.

Senators, first and foremost, I am a police officer -- a career police officer. In my police experience, the most frustrating of all problems that I have discovered facing law enforcement in this country -- Federal, state, or local -- is when demands are made of them to perform their traditional role as protector of life and property without clear and understandable legal bases to do so.

I recognize that the formulation of such a legislative charter will be a most precise and demanding task.

It must be sufficiently flexible that it does not stifle FBI effectiveness in combating the growing incidence of crime and violence across the United States. That charter must clearly address the demonstrated problems of the past; yet, it must amply recognize the fact that times change and so also do the nature and thrust of our criminal and subversive challenges.

The fact that the Department of Justice has commenced the formulation of operational guidelines governing our intelligence activities does not in any manner diminish the need for legislation. The responsibility for conferring jurisdiction resides with the Congress.

In this regard, I am troubled by some proposals which question the need for intelligence gathering, suggesting that information needed for the prevention of violence can be acquired in the normal course of criminal investigations.

As a practical matter, the line between intelligence work and regular criminal investigations is often difficult to describe. What begins as an intelligence investigation may well end in arrest and prosecution of the subject. But there are some fundamental differences between these

investigations that should be recognized -- differences in scope, in objective and in the time of initiation. In the usual criminal case, a crime has occurred and it remains only for the Government to identify the perpetrator and to collect sufficient evidence for prosecution. Since the investigation normally follows the elements of the crime, the scope of the inquiry is limited and fairly well defined.

By contrast, intelligence work involves the gathering of information, not necessarily evidence. The purpose may well be not to prosecute, but rather to thwart crime or to insure that the Government has enough information to meet any future crisis or emergency. The inquiry is necessarily broad because it must tell us not only the nature of the threat, but also whether the threat is imminent, the persons involved, and the means by which the threat will be carried out. The ability of the Government to prevent criminal acts is dependent on our anticipation of those unlawful acts. Anticipation, in turn, is dependent on advance information -- that is intelligence.

Certainly, reasonable people can differ on these issues. Given the opportunity, I am confident that the continuing need for intelligence work can be documented to the full satisfaction of the Congress. We

recognize that what is at stake here is not the interests of the FBI, but rather the interests of every citizen of this country. We recognize also that the resolution of these matters will demand extensive and thoughtful deliberation by the Congress. To this end, I pledge the complete cooperation of the Bureau with this Committee or its successor in this important task.

In any event, you have my unqualified assurance as Director that we will carry out both the letter and the spirit of such legislation as the Congress may enact.